

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-SB447)

Received: 03/03/2006

Received By: rnelson2

Wanted: Soon

Identical to LRB:

For: Mark Gundrum (608) 267-5158

By/Representing: Don Dyke

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - miscellaneous
Courts - civil procedure

Extra Copies:

Submit via email: YES

Requester's email: Rep.Gundrum@legis.state.wi.us

Carbon copy (CC:) to: don.dyke@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Punitive damages

Instructions:

See Attached make same as passed in Assembly as AB843

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 03/03/2006	wjackson 03/03/2006		_____			
/1			jfrantze 03/06/2006	_____	mbarman 03/06/2006	mbarman 03/06/2006	

FE Sent For:

<END>

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/?	rnelson2	1 wj 3/3	3/6	3/6			

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<END>

✓ Assembly Substitute Amendment
✓ 2005 ASSEMBLY BILL 843 447
SENATE

D-Note

November 23, 2005 - Introduced by Representatives GUNDRUM, HUEBSCH, ALBERS, NISCHKE, KRAWCZYK, MUSSER, HAHN, OWENS, F. LASEE, NASS, VOS, BIES and KESTELL, cosponsored by Senators GROTHMAN, SCHULTZ, ROESSLER and LAZICH. Referred to Committee on Judiciary.

- rege*
- 1 AN ACT *to renumber and amend* 895.85 (3); and *to create* 895.85 (3) (a) and
2 895.85 (3) (b) of the statutes; **relating to:** punitive damage awards.

Analysis by the Legislative Reference Bureau

Substitute

Under current law, a person injured by a negligent person can recover the damages resulting from the injury, including economic damages, such as his or her medical costs, and noneconomic damages, such as compensation for pain and suffering. In addition, under current law, as interpreted by the Supreme Court, in *Wischer v. Mitsubishi*, 2005 WI 26, 279 Wis. 2d 4 (2005), the plaintiff may recover punitive damages if he or she can prove that the defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff.

This bill changes the proof that the plaintiff must provide to recover punitive damages. Under the bill, the plaintiff must prove that the defendant either acted with the intent to cause injury to a particular person or persons or that the defendant knew that the defendant's action was practically certain to result in injury to one or more persons.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 3 SECTION 1. 895.85 (3) of the statutes is renumbered 895.85 (3) (intro.) and
4 amended to read:

ASSEMBLY BILL 843

SECTION 1

1 895.85 (3) (intro.) The plaintiff may receive punitive damages if evidence is
2 submitted showing that the defendant acted maliciously toward the plaintiff or in an
3 intentional disregard of the rights of the plaintiff. did any of the following:

4 SECTION 2. 895.85 (3) (a) of the statutes is created to read:

5 895.85 (3) (a) Acted with the intent to cause injury to a particular person or
6 persons.

7 SECTION 3. 895.85 (3) (b) of the statutes is created to read:

8 895.85 (3) (b) Knew that the defendant's action was practically certain to result
9 in injury to one or more persons.

10 SECTION 4. Initial applicability.

11 (1) This act first applies to actions that occur on the effective date of this
12 subsection.

13 (END)

! D-Note
This draft is the same
as passed as SB 447, with SA 1,
but without SB 20
RPN

**ASSEMBLY AMENDMENT 1,
TO 2005 ASSEMBLY BILL 843**

January 17, 2006 – Offered by Representative GUNDRUM.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 8: after "action" insert "that resulted in injury to one or more
3 persons".

4 **2.** Page 2, line 9: after that line insert:

5 **SECTION 3m.** 895.85 (6) of the statutes is created to read:

6 **895.85 (6)** UNAVAILABLE DEFENSE. A voluntarily produced intoxicated or
7 drugged condition is not a defense to liability for punitive damages if, had the actor
8 not been in that intoxicated or drugged condition, he or she would have known that
9 his or her action that resulted in injury to one or more persons, done while in the
10 intoxicated or drugged condition, was practically certain to result in injury to one or
11 more persons".

12

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0627/1dn
RPN:wlj:jf

March 6, 2006

This draft is the same as passed SB 447, with SA1, but without SA2.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us